

**LFC Requester:****Theresa Rogers**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**          

**Correction**           **Substitute**          

**Date**   1/14/16  

**Bill No:**       HB 86      

**Sponsor:**   Kelly K. Fajardo  

**Agency Code:**       305      

**Short**      Domestic Violence Warrantless  

**Person Writing**          Peggy Jeffers      

**Title:**          Arrests      

**Phone:**   827-6024   **Email**   pjeffers@nmag.gov  

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

#### **Synopsis:**

HB 86 proposes to amend Section 31-1-7 NMSA 1978 to allow a peace officer to make a warrantless arrest of a person the officer has probable cause to believe has committed an assault or battery upon a household member at a location other than the scene of the alleged incident and at a time up to twenty-four hours after the officer is summoned to the scene of the alleged incident.

In subsection A(1), the bill removes the requirement that the officer be at the scene of a domestic disturbance. It removes the definition of "household member" and places it in a new separate subsection D.

It adds subsection (A)(2), requiring the arrest to be reasonably necessary to protect a household member from future domestic abuse.

A new subsection (A)(3) states that the arrest may be made at the scene of the domestic disturbance or at another location if it is made with reasonable promptness after the domestic disturbance. "Reasonable promptness" is defined in the newly-added subsection "D" as occurring within twenty-four hours after a peace officer is summoned to the scene of the domestic disturbance.

Subsection B substitutes the gender-neutral term "the officer" for "he."

Subsection D defines "domestic abuse," "household member," and "reasonable promptness."

### **FISCAL IMPLICATIONS**

#### **SIGNIFICANT ISSUES**

HB 86 may be subject to constitutional challenge based upon Art. II, Sec. 10 of the New Mexico Constitution and the Fourth Amendment of the United States Constitution as an erosion of the general requirement for arrest warrants for misdemeanor arrests.

### **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

HB 86's definition of "household member" differs from the definitions in Section 30-3-11 of the Crimes Against Household Members Act and Section 40-13-2 of the Family Violence Protection Act.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. The general rule in New Mexico is that an officer may make a warrantless arrest for a misdemeanor offense only if the offense was committed in the officer's presence. Section 31-1-7 NMSA (A) creates an exception to the general rule. Its provisions still would be interpreted in light of the NM Supreme Court's decision in *State v. Almanzar*, which held that the existing "at the scene" language is subject to a reasonableness test rather than a literal interpretation and that in the case before it a warrantless arrest made within minutes of the incident at a location directly across the street from the incident was lawful under Section 31-1-7(A).

## **AMENDMENTS**